

**APPENDIX.****Provisions of Article 18 of the Labor Law of New York  
Pertinent to This Case.**

(Ch. 142, L. of 1937; Ch. 10, 265, 266, L. of 1938.)

Section 502. Definitions. As used in this article:

1. "Employment," except where the context shows otherwise, means any employment under any contract of hire, express or implied, written or oral, including all contracts entered into by helpers and assistants of employees, whether paid by employer or employee, if employed with the knowledge actual or constructive of the employer, in which all or the greater part of the work is to be performed within this state.

But for the purposes of this article, "employment" shall not include:

- (1) Employment as a farm laborer; or
- (2) Employment by an employer of his spouse or minor child.

2. "Employee" means any person, including aliens and minors, employed for hire by an employer in an employment subject to this article, except that for all or part of any calendar year prior to January first, nineteen hundred thirty-eight no person shall be deemed an employee for any of the purposes of this article if during such calendar year he was paid by his employer or employers remuneration for employment amounting to more than three thousand dollars.

3. "Employer" means any person, partnership, firm, association, public or private, domestic or foreign corporation, the legal representatives of a deceased person, or the receiver, trustee or successor of a person, partnership, firm, association, public or private, domestic or foreign corporation, who or whose agent or predecessor in interest has employed at least four persons in any employment subject to this article, providing however, that:

(1) Employment of such persons within each of thirteen or more calendar weeks in the year nineteen hundred thirty-five shall make an employer subject to this article on and after January first, nineteen hundred thirty-six.

(2) Employment of such persons within each of thirteen or more calendar weeks in the year nineteen hundred thirty-six by an employer not already subject to this article shall make such employer subject hereto on and after January first, nineteen hundred thirty-six.

(3) Employment of four or more such persons within each of fifteen or more days within any calendar year after December thirty-first, nineteen hundred thirty-six, by an employer not already subject to this article shall make such employer subject hereto on and after the first of the fifteen days within which such employment occurs.

(a) Whenever any helper, assistant or employee of an employer engages any other person in the work which said helper, assistant or employee is doing for the employer, such employer shall for all purposes hereof be deemed the employer of such other person, whether such person is paid by the said helper, assistant or employee, or by the employer, provided the employment has been with the knowledge, actual, constructive or implied, of the employer.

(b) In determining whether an employer is subject to this article, and in determining for what contributions he is liable hereunder, such employer shall, whenever he contracts with any person for any work which is part of such employer's usual trade, occupation, profession or enterprise be deemed to employ all employees employed by such person for such work and he alone shall be liable for the contributions hereunder with respect to wages paid to such employees for such work unless such person performs work or is in fact actually available to perform work for anyone who may wish to contract with him and is also found to be engaged in an independently established trade, business, profession or enterprise.

(c) All persons thus employed by an employer (of any person) within the state, in all of his several places of em-

ployment maintained within the state, shall be treated as employees of a single employer for the purpose of this article, excepting, however, persons employed in personal or domestic service in private homes, and with respect to such persons, an employer shall not be subject to this article unless he has employed a total in all the several places of such personal or domestic service maintained by him within the state of at least four such persons within the several periods and under the conditions above provided in this subdivision.

(d) The state of New York, municipal corporations and other governmental subdivisions, and any corporation, unincorporated association, community chest, fund or foundation organized and operated exclusively for religious, charitable, scientific, literary or educational purposes, no part of the net earnings of which inures to the benefit of any private shareholder or individual, shall not be employers subject to this article.

(e) Any employer who has once become subject to this article shall cease to be subject hereto as of the first day of January of any calendar year only after a written application by him made not later than the thirty-first day of January of such year and after a finding by the commissioner that he has not within any fifteen days in the preceding calendar year, employed four or more persons in any employment subject hereto.

(f) Any employer (of any person within the state) not otherwise subject to this article shall become fully subject hereto, upon filing by such employer with the commissioner of his election to become fully subject hereto for not less than two calendar years, subject to written approval of such election by the commissioner. Such an employer shall continue to be subject hereto for successive periods of two calendar years each unless he files with the commissioner a written notice of his intent to terminate his liability hereunder not later than thirty days before the expiration of any such two-year period.

4. "Fund" means the unemployment insurance fund created by this article.

5. "Benefit" means the money allowance payable to an employee as provided in this article.

6. "Remuneration" shall mean every form of compensation for employment paid to an employee by his employer, whether paid directly or indirectly by the employer, including salaries, commissions, bonuses, and the reasonable money value of board, rent, housing, lodging or similar advantage received. Where gratuities are received by the employee in the course of his employment from a person other than his employer, the value of such gratuities shall be determined by the commissioner and be deemed and included as part of his remuneration paid by his employer.

6-a. "Wages" shall mean the first three thousand dollars of remuneration paid to an employee by each of his employers with respect to employment during any calendar year.

7. "Payroll" shall mean all wages paid by an employer to his employees as defined in subdivision two of section five hundred and two herein.

8. "Base year" means the calendar year immediately preceding the beginning of a benefit year. But if within the calendar year an employee has not been paid wages equal to at least eighteen times his benefit for a week of total unemployment, "base year" with respect to such employee shall mean the first four of the last five completed calendar quarters immediately preceding the first day of any week in the current benefit year with respect to which a claim to benefits has been made by such employee.

8-a. "Benefit year" means the period from April first of each successive calendar year to and including March thirty-first of the next subsequent calendar year.

9. "Full-time weekly wages" shall be determined as follows:

With respect to each employee, there shall first be ascertained the highest weekly wages paid to such employee within each calendar quarter of his base year; of the four amounts thus obtained. The largest and smallest shall be

excluded, and the average of the two middle amounts shall be deemed such employee's full-time weekly wages; provided that, for an employee to whom wages have been paid within only two calendar quarters during his base year, his full-time weekly wages shall be the average of the highest weekly wages paid to him within each of the two calendar quarters, and for an employee to whom wages have been paid in only one calendar quarter during his base year, his full time weekly wages shall be the highest weekly wages paid to him in such calendar quarter. In any case, however, where there is a fixed rate of wages for a day, week or longer payroll period full-time weekly wages shall be the weekly equivalent of such rate. The commissioner may make such rules and adopt such methods of calculating full-time weekly wages as may be suitable and reasonable under this article.

10. "Total unemployment" means the total lack of any employment, including employment not subject to this article, together with the total lack of all compensation during a period of seven consecutive calendar days, both of which are caused by the inability of an employee who is capable of and available for employment to obtain any employment in his usual employment or in any other employment for which he is reasonably fitted by training and experience, including employments not subject to this article. Where an employee's compensation for employment or employments, including employments not subject to this article, does not in the aggregate exceed two dollars for a period of seven consecutive calendar days, such employment or employments and the compensation therefor shall be disregarded in determining whether there is "total unemployment" with respect to such employee.

#### SECTION 515. PAYMENT OF CONTRIBUTIONS.

1. On and after the first day of January, nineteen hundred thirty-six, contributions shall be payable by each employer then subject to this article. Contributions shall become payable by any other employer on and after the date on which he becomes subject to this article.

2. All contributions from employers shall be paid at such times and in such manner as the commissioner may prescribe, but in no event shall any contribution be paid prior to March first, nineteen hundred thirty-six.

3. All contributions paid under this article, together with the interest and the earnings thereon and any penalties, shall upon collection be deposited in or invested in the obligations of the "Unemployment Trust Fund" of the United States government or its authorized agent, so long as said trust fund exists, notwithstanding any other statutory provision to the contrary. The commissioner shall requisition from the unemployment trust fund necessary amounts from time to time.

4. The exemption from taxation granted to fraternal benefit societies under the provisions of section two hundred and forty-six of chapter thirty-three of the laws of nineteen hundred nine, entitled "An Act in relation to insurance corporations, constituting chapter twenty-eight of the consolidated laws," as added by chapter one hundred and ninety-eight of the laws of nineteen hundred eleven, shall not be so construed as to apply to the payment of contributions under this article.

#### SECTION 516. CONTRIBUTIONS TO THE UNEMPLOYMENT INSURANCE FUND.

The contribution regularly payable by each employer shall be an amount equal to three per centum of the payroll of employees, as herein defined, except that the contribution payable by each employer for the calendar year nineteen hundred thirty-six shall be an amount equal to one per centum of such payroll and for the year nineteen hundred thirty-seven shall be an amount equal to two per centum of such payroll.